

LABOUR DEPARTMENT

Dated the 11th July, 1978

No. 11(112)-3Lab.-78/6727.—In pursuance of the provision of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad. In respect of the dispute between the workmen and the management of M/s. Bolton Industrial Corporation, 14/3 Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA,
PRESIDING OFFICER, INDUSTRIAL TRIBU-
NAL, HARYANA, FARIDABAD.

Reference No. 138 of 1974

SHRIMATI SHEELA GULATI WORKMAN AND
THE MANAGEMENT OF M/S. BOLTON INDUS-
TRIAL CORPORATION, 14/3, MATHURA
ROAD, FARIDABAD.

Present:

Shri Sagar Ram Gupta, for the workman.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD756-A-74/32481, dated 16th September, 1974, the Governor of Haryana, referred the following disputes between the management of M/s. Bolton Industrial Corporation, 14/3, Mathura Road, Faridabad and its workman Shrimati Sheela Gulati, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (i) of section 10 of the Industrial Disputes Act, 1947.

"Whether the termination of services of Shrimati Sheela Gulati was justified and in order? If not, to what relief is she entitled?"

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleading. On the pleading of the parties, the following issues were framed on 2nd January, 1975 by my learned predecessor.

Whether Shrimati Sheela Gulati, worker concerned has settled his dispute and

received payment of her dues as alleged by the management?

This issue was decided by my learned predecessor by administration of a special oath to a relative of the workman, vide this order, dated 9th May, 1975 against the management. Thereafter the following issues were framed by my learned predecessor on 23rd June, 1976.

- (1) Whether the work-woman abandoned her job voluntarily by way of absenting herself from duty from 18th November, 1973 to 1st January, 1974.
- (2) If not, whether the termination of services of Shrimati Sheela Gulati was justified and in order? If not, to what relief is she entitled?

Before discussing the evidence on issues, it would be proper to narrate facts of this case. The workman is a lady. She raised her demand through herself, i.e., not through any representative. The demand notice is signed by her in English and is typed written in English. The workman lady also filed a claim statement, dated 14th November, 1974, through herself in Hindi signing in Hindi stating her pleas in it, she prayed that at least during the period of her unemployment, she be paid half of her wages. To this claim statement the management filed a reply to which the workman lady filed a replication/Rejoinder, dated 8th March 1976 through herself signed in English. She filed a power of attorney, dated 5th November, 1976 in favour of Shri Adarsh Kishore Sharma and Shri B. S. Gulati, her husband. In the mean time the management pleaded a settlement to which the workman lady filed a reply dated 1st January, 1975 through herself stating that the settlement was arrived at under pressure and that the settlement was null, as the management did not make her payment as per the settlement stating therein that the said settlement was for Rs 633.92 and the management had got her signatures on this amount and back dated it 19th November 1974 instead of 20th November, 1974. On several dates of hearing the workman appeared with her husband as her representative and sometimes with Shri Ish Kumar Gulati. Once Shri Onkar Parshad also appeared for her. During the period from 21st October, 1974 up to 14th September 1976, either the husband of the workman lady or she appeared on several dates of hearing and proceedings were conducted in their presence

except on one/two dates of hearing when Shri Onkar Parshad or Ish Kumar appeared as her representative. Shri Adarsh Kishore, representative for her appeared on 8th November, 1976 when the evidence of the management was recorded.

The real point in controversy between the parties is that the workman lady remained absent from 18th November, 1973 to 1st January, 1974 in an unauthorised manner. It is an admitted fact that the workman lady was granted leave from 14th November, 1973 to 17th November, 1973. The controversy arises hereafter. The plea of the management is that after 17th November, 1973 the workman lady neither sent any application for extension of leave nor sent any medical certificate up to 1st January, 1974 and thus she remained absent and therefore, the management invoked the provisions of their standing orders in this connection. The plea of the workman lady is that she had sent her application for extension of leave on 18th November, 1973 together with a medical certificate through her husband. The whole controversy lies here. Now, I discuss the evidence and give my findings issuewise.

Issue No. 1 as framed on 18th June, 1976:

The management examined their Ex-Manager Shri M. M. Sharma as M.W. 1 who stated that he was the manager of the factory of the management in the year 1973-74 and was not in that employment on the day he appeared as a witness. He knew the workman lady. The management had brought muster roll register. He deposed that the workman lady was on leave from 14th November, 1973 to 17th November, 1973. She had to report on duty on 18th November, 1973, but she did not turn up and remained absent. The management waited for her till 6th December, 1973 and struck off her name on 7th December, 1973. He further deposed that the workman lady came to him in the first or second week of January, 1974, as far as he remembered and requested him to take her on duty. She told him that she was ill and hence could not come. He told her to bring some medical certificate from either E.S.I. dispensary or Government hospital covering the period of her absence and then she could be taken on duty with the continuity of service. He further told her that if she could not bring the said certificate, they could give her new employment, but she did not do either of the things. He further deposed that they got no leave application or any other information from her

regarding the period of absence. He cited relevant certified standing orders that if a workman falls ill, he should produce either a certificate from E.S.I. dispensary or from some Government hospital. He proved the relevant extract of the standing orders. Although he had brought the original certified standing orders also with him. He further deposed that this provisions of the standing order was displayed on the notice board also. Then the workman lady came to him in the month of January, he did not work in the factory thereafter. He admitted that the workman lady used to remain in Delhi. He proved certain documents. He denied a suggestion that the management received application of the workman lady for the period after 17th November, 1973. He could not say whether a workman holding E.S.I. card from old Faridabad E.S.I. dispensary can get him treated in the Delhi dispensary, but he deposed that the workman can get his dispensary changed from old Faridabad to Delhi and thereafter she can get her treatment there. He denied a suggestion that the management deducted bus fair for the months of November, 1973 and January, 1974 from the amount that they paid to her against wages in January, 1974. He deposed that the management might have taken part in conciliation proceedings. He further deposed that he had asked orally for her explanation regarding her absence. He denied that the workman lady was on medical up to 1st January, 1974. He also denied that the workman lady worked in the factory from 2nd January, 1974 to 9th January, 1974. He further denied that the workman lady turned up at the factory premises on 9th January, 1974. He deposed that he could not remember whether the management wrote a letter to the workman lady regarding her absence. In re-examination he stated that bus fair for November, 1973 was deducted from her wages for October, 1973. The management closed their case.

Then the case was fixed for the evidence of the workman. The workman lady examined herself as W.W. 1. She deposed that she was getting Rs. 120 per month as wages when she was turned out of her service and that she was residing in Delhi at that time and that she was attached to E.S.I. dispensary Faridabad. She deposed that she fell sick on and from 14th November, 1973 to 1st January, 1974 and that she had sent her application regarding her sickness to the management between 14th November, 1973 and 17th November, 1973.

She further deposed that for the period of sickness after 17th November, 1973 to 1st January 1974, she again sent another application to the management through her husband and she received no letter from the management. She went on her duty on 2nd January, 1974 and began to work but she was not marked present. She asked the Manager to get her marked present. The Manager told her that he shall get her attendance card prepared after 3/4 days but it was not prepared. She again asked the Manager for the same. He further deposed that she was going on duty on 9th January, 1974 but the Manager refused her to give her duty on 12th January, 1974 and she gave her demand on 15th January, 1974 directly. She stated that he gave in writing to the Manager on 8th January, 1974 about her attendance card. She proved some documents. She further deposed that when the Management did not concede her demand, she moved the Labour-cum-Conciliation Officer. She also complained to the Labour Inspector on 15th January, 1974. She further deposed that thereafter she again gave a demand notice to the management on 1st February, 1974. The matter could not be conciled and the conciliation officer sent a failure report to the Government. She received her wages on 6th January, 1974 and the management had deducted a sum of Rs. 30 from her wages regarding bus fare. The bus fare was in advance for a month. He further deposed that the management did not display any notice on the notice board prescribing leave rules and its sanction. In cross-examination she deposed that she was living at Delhi when she joined the service. She expressed her ignorance whether an employee registered in E.S.I. dispensary, Faridabad can obtain medicine from E.S.I. dispensary, Delhi for their treatment and that such employee can get themselves registered in Delhi E.S.I. dispensary. She deposed that she was living in Subhash Nagar in Delhi. She admitted that there was a Government dispensary or of a Corporation in Subhash Nagar. After April, 1973 she stayed at Faridabad when her husband also got a job at Faridabad and then they began to live at Faridabad. But when her husband lost his job, they went to Delhi but she did not get herself registered in Delhi E.S.I. dispensary. She deposed that she was suffering from dysentery from 14th November, 1973 to 1st January, 1974. She further deposed that her husband might have got the receipt of the application from the management that she had sent her application through him. She denied that she did not send

her application for the period after 18th November, 1973 to 1st January, 1974. She denied another suggestion also. She stated that she did not get letter from the management asking her to produce the required certificate. She admitted that she never attended the factory after 10th January, 1974. He admitted that the bus fare of Rs. 30 was deducted from her wages on 6th January, 1974 and the bus fare pertained to November, 1973 according to the management but she told that her bus fare for November, 1973 had already been deducted from her previous wages. Rs 10 pertained to half January and Rs. 20 to November, 1973. She deposed that she had no receipt for this bus fare. She further stated that the management had obtained her signatures on a voucher. She denied a suggestion that she did not perform any duty from 2nd January, 1974 to 10th January, 1974, but simply went there of her own.

The workman lady examined her husband Shri P. S. Gulati as W.W. 2, who deposed that her wife had asked him to go to the factory and give her application for sick leave from 14th November, 1973 to 17th November, 1973, but his wife did not recover up to 17th November, 1973. He again went to the factory with another application for sick leave from 18th November, 1973 to 1st January, 1974 with a medical certificate, copy whereof is Ex. W-5 which is certified to be a true copy by his wife. In cross examination he stated that he had gone to the office room and not in the workshop and that he had not got the application acknowledged by the Factory Manager. He denied a suggestion that he did not hand over the original of Ex. W-3 (the leave application) to the management personally. He denied a suggestion that the copy of the medical certificate was not a correct copy and was a fabricated one. He also denied a suggestion that his wife sent no application for leave for the period after 17th November, 1973. He admitted that after 1st September, 1974 whatever letters and applications were sent by his wife were sent by either registered post or U.P.C. and that neither he nor his wife gave any application or letter to the management between 19th November, 1973 and 8th January, 1974. He further stated that on 2nd January, 1974 his wife had a fit certificate with her. He expressed his ignorance whether his wife had a copy of fitness certificate or not. He further stated that letter dated 28th January, 1974 and another

letter were sent under U.P.C. He further admitted that he did not present any other application or letter personally to the management except the two for her leave. One for 14th November, 1973 to 17th November, 1973 and the second from 18th November, 1973 to 1st January, 1974.

The workman also examined one Dr. Nirmal Singh a registered medical practitioner as W.W. 3 who stated that his clinic was situated in 100 Minaksi Ghat, New Delhi and the workman was under his treatment. He stated that Exhibit W-16 was the correct copy of his certificate. He had brought the counter foil of his book of certificates. He granted fitness certificate to the workman lady from 2nd January, 1974 on 1st January, 1974. She was declared fit by him on 2nd January, 1974. In cross-examination he stated that he had given two certificates to the workman lady as she had told him that she had to produce one original to the management and shall keep with him the other certificate. He held a Diploma from Tibbia College Lahore and got it in 1942. He was registered in Part I as a qualified practitioner. He did not bring his Diploma with him. He admitted that he was not M.B.,B.S. He formed his opinion that the workman shall require treatment upto 1st January, 1974 on the ground that she was suffering from Dysentery and gestratits, then he gave a full name of this disease as Gestroeltritis and told that he has used the word Gestratits in an abbreviated form. He stated that this disease takes generally from 2/3 months for cure. He stated that he had not brought register of patients entries. He had given prescription slip to the workman lady. Then he said that he did not maintain any register which could show as to when the patient went to him for treatment and by what time took his treatment and what medicines were given to him. He then stated that prescription slips are kept with him and the treatment is entered thereon. But he said that when the patient leaves the clinic, he takes away that slip with him and again brings it to him. He also did not bring the certificate of registration. He admitted that his book of certificates is not printed with his name and when he uses it he put his signatures and his seal. He denied a suggestion that he was not a medical practitioner and had deposed falsely. The workman lady also examined the Accountant Assistant of the management as W.W. 4 who deposed that the workman lady was paid the wages for October, 1973 on 7th November, 1973, amounting to Rs. 104.08 and a sum of Rs. 20 was deducted therefrom, and the net amount of Rs. 84.08 is shown in pencil. He denied that the deduction of Rs. 20 relates to advance bus fare. The workman lady was paid Rs. 42.15 for the month of November, 1973 and a sum of Rs. 20 was also deducted and the net amount is shown as Rs. 22.15. These wages were paid to her on 6th January, 1974. On 6th January, 1974 a sum of Rs. 800 has been shown as credit against conveyance for 37 workers for January, 1973. In the cash book of 8th November, 1973 a sum of Rs. 920 is credited against conveyance account received from the employees for the month of November, 1973. In cross-examination he produced a true copy of voucher dated 6th January, 1974 for a sum of Rs. 48 paid to the workman lady. He further stated that he was not in the employment of the management in the year 1973 and 1974. The workman lady also examined one Shri Subhash Chander as W.W. 5 who deposed that the husband of the workman lady had come to the factory on 18th November, 1973, he gave application for leave for his wife. He had given that application in the factory and thereafter he saw the workman lady in the factory on 2nd January, 1974 and she worked there for 7/8 days after 2nd January, 1974. In cross-examination he stated that he had seen the workman lady in the factory some 10/12 days prior to 18th November, 1973 and he did not see her in the factory thereafter. He further stated that when he saw her for the last time in the factory, she worked in the factory for 7/8 days thereafter. He further stated that on 18th November, 1973 the husband of the workman lady had come to the factory, had met him and asked him that he had to give his wife's application and that wherein and to whom he should give. This witness told him to give it to the Manager. Then the husband of the workman lady asked him to accompany him to the Manager and he accompanied him. This witness admitted that the husband of the workman lady had not given that application to the Manager in his presence. He further stated that he had seen the application and the medical certificates. He stated that he had not read the contents of the application and the medical certificate. This witness was literate upto 10th standard. This witness admitted that he was not in the employment of the management as he had resigned but the management had not terminated his

services. He further deposed that he did not maintain any diary. He stated that he remembered the date 18th November, 1973 as the husband of the workman lady had come that day. He could not give the date of Diwali festival. He denied the suggestion that he had deposed falsely. The learned representative for the workman then closed the case for the workman.

Then the case was fixed for arguments. Arguments were heard in detail. Now I discuss the evidence of the parties under this issue.

W.W. 1 the workman lady did not state that the application for leave from 17th November, 1973 to 1st January, 1974 was accompanied by a medical certificate, although W.W. 2 her husband stated that the medical certificate was attached with that application. In her claim statement the workman lady has stated that the management did not take her on duty on 10th January, 1974, whereas in her statement as W.W. 1 she had stated that the management refused her to give duty on 12th January, 1974 and she gave in writing her demand on 15th January, 1974 but W.W. 5 stated that he did not see her in the factory after 7 or 8 days after 2nd January, 1974. In her claim statement she stated that a sum of Rs. 20 as bus fair was deducted from her pay from January, 1974, when she received her wages on 6th January, 1974, whereas as W.W. 1 she stated that bus fair of Rs. 30 was deducted out of which Rs. 20 pertained to November, 1973 and Rs. 10 pertained to half of January, 1974. The workman lady had sent all her letters and applications either by registered post or under U.P.C. after 18th November, 1973 as admitted by her husband W.W. 2. It is not understood as to why she did not send her leave application from 18th November, 1973 to 1st January, 1974 by registered post or under U.P.C. There is no documentary proof on the file that she sent her application from 18th November, 1973 to 1st January, 1974, although there is oral statement of her husband. The workman lady as W.W. 1 and her husband W.W. 2 stated that the application from 18th November, 1973 to 1st January, 1974 was sent through W.W. 2 her husband. Her husband has stated that he had given prior application also for leave from 14th November, 1973 to 17th November, 1973 to the Factory Manager. W.W. 5 stated that W.W. 2 came to him on 18th November, 1973 in the factory and asked him that he had to give an application

for leave and enquired from him as to whom and where he had to give that application and he told him to give it to the Manager. Then W.W. 2 asked him to accompany him to the Manager and W.W. 5 accompanied him. When W.W. 2 had given prior application for leave from 14th November, 1973 to 17th November, 1973 to the Factory Manager himself how the occasion arose that W.W. 2 had to ask W.W. 5 as to whom and at what place he had to give the second application for 18th November, 1973 to 1st January, 1974, the statements of W.W. 2 and W.W. 5 are contradictory and belie the version of W.W. 2. W.W. 5 also stated that W.W. 2 did not give that application to the Manager in his presence. What was then the necessity of accompanying W.W. 2 to the Manager. W.W. 5 also stated that he did not see the workman lady on 17th November, 1973 in the factory and had seen her some 10/12 days prior to 18th November, 1973. It is an admitted fact that the workman lady was on duty on 13th November, 1973, as her first application was from 14th November, 1973 to 17th November, 1973. Moreover, W.W. 5 had resigned the job of the management as per his statement. It is also un-intelligible that W.W. 5 remembered the exact date when W.W. 2 went to him for giving second leave application to the management. W.W. 1 stated that she was suffering from dysentery. W.W. 3 Doctor deposed that she was suffering from Dysentery and Gastritis. The workman lady stated that she lived in Subhash Nagar in Delhi and she admitted that there was a Government dispensary or a dispensary of Corporation in Subhash Nagar. It is un-intelligible as to why she did not get her treated there and did not get any certificate of illness from that dispensary. The workman lady stated in cross-examination that her husband might have got the receipt of the application from the management that she had sent through him but no such receipt was produced. W.W. 2, her husband stated that he did not get any receipt from the management. Although the workman lady had herself got a receipt of her application from the Labour Inspector. The demand notice of the workman lady speaks that the management terminated her services on 23rd January, 1974. She has given different dates of termination of her services in demand, notice, claim statement and her statement as W.W. 1. The workman lady is not below average intelligence rather she is intelligent. She has signed in English the English draft of letters and pleadings and in Hindi the Hindi

drafts. She herself has conducted proceedings up to a particular stage. The proceedings before Labour Inspector and Labour-cum-Conciliation Officer have been conducted by the workman lady herself. Her husband has the capability of representing her in proceedings as the workman lady has given letter of authority in his favour also and on several dates of hearing her husband along appeared. It seems probable as per the statement of M.W. 1 Shri M. M. Sharma, Ex-Manager of the management that when the workman lady attended the factory, he told her to bring a medical certificate from E.S.I. dispensary or from Government hospital covering the period of absence. When she was not marked present from 2nd January, 1974 to 8th January, 1974, why she did not report in writing on 3rd, 4th and 5th or so January, 1974, and waited up to 8th January, 1974, as per his claim statement. In view of the statement of W.W. 5, the statement of W.W. 2 has no credence as the statement of the two belie each other Statement. The statement of W.W. 3, Dr. Nirmal Singh also does not inspire reliability. He has stated that the workman lady was suffering from Dysentery and Gastritis, then he proved the name of the disease as Gastroenteritis. There is a copy of the medical certificate certified to be true copy by the workman lady in which the spellings of this disease also differ. It is strange that the Doctor could not spell the name of the disease correctly. The clinic of the doctor W.W. 3 is situated in 100 Minaksi Ghat, New Delhi, whereas the workman lady resided in Subhash Nagar, Delhi. The doctor has not brought even the register of entries of patients and stated that he did not maintain any such register but given prescription slips to the patient and he did not maintain any register which could show as to when the patient came to him for treatment and by when took his treatment and what medicines were given to her. He deposed that the prescription slips were taken away by the patients. His book of certificate was also not printed with his name. He simply puts his signatures and put his seal on the certificate. He proved Ex. W-16, which also contains the name of the disease Gestratitis as Gestratites. Here also there is a difference in spellings of diseases. It is not understood as to why he did not give the full name of the disease in his certificate. W.W. 3, the doctor deposed that he had given two certificates to the workman lady as she had told him that

she had to produce one certificate to the management and keep with her the other certificate. When the workman lady was so particular about keeping another medical certificate with her, it does not stand to reason as to why she did not send her application from 18th November, 1973 to 1st January, 1974, and medical certificate by a registered post or under U.P.C. The copy of the medical certificate produced and the statement of W.W. 3 does not inspire credence. I have also gone through the relevant extract of standing orders in this connection. Clause 'G' of rule I defines medical certificate, either issued by doctor of E.S.I. dispensary or medical officer of the hospital or the dispensary managed either by the Government or by the local authority or by a registered medical practitioner in case the workman is away from his place of residence. In this case the workman lady was not away from his place of residence. She was residing in Delhi and in Delhi there are several Government hospitals, dispensaries managed by the Government or local authorities. The certificate of registered medical practitioner in case of workman lady did not fall within the definition of medical certificate. Even there is a dispensary by a local authority or Government even in Subhash Nagar where she resided.

I can not believe the solitary statement of W.W. 2, the husband of workman lady that he gave application for leave from 18th November, 1973 to 1st January, 1974, together with medical certificate to the management on 18th November, 1973. Even the factum of giving the said application to the Manager on 18th November, 1973, is not corroborated by W.W. 5, who had accompanied W.W. 2 to the Manager on 18th November, 1973. The husband of the lady has admitted that during the period between 19th November, 1973 and 8th January, 1974, he or his wife did not send or give any application or letter to the management. The management had granted leave from 14th November, 1973 to 17th November, 1973. The workman lady or her witness did not make any allegation of animus against the management. There is no sufficient reason as to why the management should have denied the receipt of the application and the medical certificate covering the period from 18th November, 1973 to 1st January, 1974. The workman lady stated that she gave her said application to her husband for giving it to the management, beyond that her roll did not extend.

The learned representative for the workman lady has cited 1976-I-LLJ-93, 1977-I-LLN-593, 1975-Lab-IC-1558, 1976-AIR-page 37 and also referred to D.C.M's case.

1976-I-LLJ-93 does not apply to the facts of this case, as in that case the workman had sought extension of leave on medical certificate and the management had refused to grant leave. These facts do not occur in this case.

I have gone through 1975-Labour Industrial Cases—1558, in this case the workman lady was granted leave from 10th August, 1971 to 16th August, 1971 as she was pregnant and she had given birth to Twins on 19th August, 1971, and medical certificate were sent to the management and were received by them and her conduct in sending letters and medical certificate and prompt explanation to show cause notice were the facts against interference of abandonment, and the genuineness of the medical certificates was not in dispute. Moreover, in that case Model standing orders were follows:—

In this case there are certified standing orders of the management. There is a provision that if a workman over stays the originally granted or subsequently extended period of leave, he shall lose his lien and if he explains within 10 days of his absence to the satisfaction of the authority, his inability to resume his duty, he may not lose the lien. This provision further provides that if the workman not reporting for duty within 10 days of causing absence shall be treated as having left the service of his own accord and the management is not required to give any intimation in this regard to the workman concerned. In this case case as I have held that the application for leave or the medical certificate covering the period from 18th November, 1973 to 1st January, 1974 was not sent to the management, nor given the ruling reported as 1975-Labour Industrial Cases pages 1558 does not apply. In this case the medical certificate is in dispute and the copy of the certificate does not inspire confidence and reliability. Even the Medical Certificate is no medical certificate as per Standing Orders.

AIR-1976 (S.C.)-37 deals with Assam Fundamental and subsidiary rules in the matter of permanent Government servant. Those fundamental rule provided for giving opportunity to show cause

why the rules was inapplicable. The facts of that case and the rules applicable are different from the rules of standing orders in this case. According to Certified Standing Orders of this management, if the workman could explain to the satisfaction of the authority, his inability to resume duty within 10 days of his absence, only then he could be saved. Now I come to Delhi Cloth Mills case as reported in 1977-Labour Industrial Cases-1695.

The facts of this case were that the post of motion-setter, on which the workman was working, was abolished due to reorganisation in the management establishment, then the management agreed to offer work to him on any other suitable post of a trainee on probation without loss of wages. Then the management had found him unsuitable for that post even after extending the period of probation up to 9 months, and then offered him the post of a Fitter on the same pay which he was drawing as a motion-setter by their letter. The management in that letter had written that the workman should accept this post within two days of the receipt of that letter otherwise the management shall presume that the proposal was not acceptable to him and as a consequent he would be retrenched from the service of the management.

After abolition of the post due to reorganization in the establishment of the management, the workman had become entitled to retrenchment. After giving some other post for a temporary period and on finding the man unsuitable, the management had again offered to retrench the workman from the service. The workman was on leave. He received the letter of the management on 12th August, 1965, but the common ground was that the workman has worked as a trainee up to 14th August, 1965. 15th August, 1965 was and is a public holiday. The workman wrote on 16th August, 1965 to the management that he may be given one chance more and if he failed thereafter, he would resign. The management kept mum and did not reply. The management wrote a letter to the workman on 19th January, 1966, that his name has been struck off with effect from 24th August, 1965, for continued absence, after about 4½ months. In these circumstances, their Lordships held that striking off the name amounted to termination which was retrenchment. The management had themselves offered to retrench, if the proposal, made by them in their letter dated 31st July, 1965, was not accepted by the workman and there was documentary proof of their

intention and the circumstances led to prove that it was a case of retrenchment if the said proposal was not acceptable to the workman.

The management then tried to bring their case within their standing orders. Their Lordships considered the standing orders but their Lordships found that the case of the management did not fall under the standing orders. Their Lordship held that more than 8 consecutive days, as per the standing orders, had not expired, hence their Lordships held that the striking off the name by the management on 24th August, 1965 was untenable even on the basis of the standing orders. Had the case fallen within the ambit of the standing orders, the judgment would have been otherwise. But the act of the management was found untenable under the standing orders, and the circumstances of the case proved, that the workman was entitled to retrenchment and the management had offered him to retrench, their Lordships held that the termination was illegal as the retrenchment compensation had not been paid to the workman.

By going through this ruling, I do not find that retrenchment compensation should be paid in all cases irrespective of the facts of a case. The ratio of this ruling leads me to think that if the act of the management fall within the ambit of the standing orders and is tenable under standing orders, judgment may differ. Their Lordships in that case have nowhere held that even if the act of the management is found tenable under the standing orders, the retrenchment compensation should be paid in all eventualities, circumstances, irrespective of the facts and not withstanding the facts, whatever those be in a particular case. There are various rulings of the Hon'ble of the Supreme Court holding the standing orders as statutory terms and conditions of service and of contract of service.

The facts of this case are quite dis-similar to the facts of D.C.M.'s case. In this case the workman lady has remained absent continuously for about 1½ months and this case falls within the ambit of the standing orders. The act of the management is tenable under sub-clause (7) of clause 12 of the certified standing orders of the management.

Their Lordships even in D.C.M.'s case, have not done away with the standing orders. Their Lordships have not nullified the standing orders. Rather they considered the standing orders but that case did not fall within the standing orders

and the act of the management was found untenable even under the standing orders. Whatever Sanctity or authority is attached to the standing orders has not been taken away by their Lordships in D.C.M.'s case.

The citation Buckingham and Carnatic Company versus Venkatiah and another, published in 25 I.F.J. page 25 is a pronouncement of the Supreme Court which is very relevant on the facts of the present case.

There are other rulings of the Hon'ble the Supreme Court also in the matter of standing orders. Those rulings have not been over ruled even by the decision of the D.C.M.'s case. It is inconceivable that the rulings in D.C.M.'s case applies to all the cases irrespective of and notwithstanding the facts whatever they be. Termination of service means "an end is put to service". It may happen in various ways, by striking of the name off the rolls, discontinuing the name on the muster rolls, dismissal, retrenchment, re-organisation in the establishment, post becoming surplus, department or factory closed, abandonment, completion of one months notice period etc. Suppose a workman remained absent for a month, two, six, or a year or more and it shall sometimes happen that his name on the muster roll shall either be struck off or be discontinued. In all these circumstances, the question may arise whether the workman shall be paid retrenchment compensation, the answer in affirmative is not deducible from the D.C.M.'s case. I think the use of "presentense" relates to that very case.

From the above discussions, I find issue No. 1 in favour of the management.

ISSUE NO. 2

In view of my findings on issues No. 1, Issue No. 2 has become redundant. I have held that it was not the management who terminated the services of the workman lady but the workman lady absented herself from 13th November, 1973 to 1st January, 1974 and thereby rendered herself for operation of the relevant clause of the standing orders, and thereby she abandoned her job, i.e., left her service of her own.

As per my findings on the issues 1 answer the reference and give my award that the workman lady abandoned left her services of her

own by remaining absent for about 1½ months. She is not entitled to any relief.
Dated the 4th July, 1978.

under section 15 of the Industrial Disputes Act, 1947.

Dated the 5th July, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 642, dated the 5th July, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required

The 27th July, 1978

No. 11(112)-3Lab-78/6788.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Indo Lowenbrau, Breweries Limited, 13/1 Mathura Road, Faridabad.

BEFORE SHRI, NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 9 of 1977

between

SHRI RANBIR SINGH WORKMAN AND THE MANAGEMENT OF M/S INDO LOWENBRAU BREWERIES LIMITED, 13/1 MATHURA ROAD, FARIDABAD.

Present.—

Nemo for the workman.

Shri K. P. Aggarwal, for the management.

AWARD

By order No. ID/383, dated the 5th January, 1977, the Governor of Haryana, referred the following dispute between the management of M/s Indo Lowenbrau Breweries Limited, 13/1, Mathura road, Faridabad and its workman Shri Ranbir Singh to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Ranbir Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were sent to the parties. The parties, appeared but on the date fixed the management have to file written statement, none appeared for them. But they filed it prior to the next date fixed and the case was fixed for filing the rejoinder. On this day both parties appeared. The workman filed his rejoinder and the following issues were framed on 29th June, 1977.

(1) Whether the workman concerned rejoined the job of his own accord?

(2) Whether the termination of services of Shri Ranbir Singh was justified and in order? If not, to what relief is he entitled.

The case was fixed for the evidence of the management. The management also did not appear, thereafter, *ex parte* proceedings were ordered against them and the case was set for the *ex parte* evidence of the Workman. The workman obtained 3/4 adjournments for adducing their evidence and on 29th December, 1977 neither he nor his representative appeared. Then notices were sent to the parties. The management appeared on 3rd February, 1978 but the workman did not appear. Notice was again sent to the workman. Then the representative for the workman appeared on 17th May, 1978 but the management did not appear. On the same date, a little later, the representative for the management Shri K. P. Aggarwal appeared and noted next date of hearing. The management applied for setting aside *ex parte* proceedings against them which was set aside subject to the payment of cost of Rs. 25 only. But then none appeared for

the workman. The workman have obtained 8/10 adjournments for adducing his evidence but he did not adduce his evidence nor he appeared on the last date of hearing which was in the knowledge of his representative. It was thought that the workman was not interested in pursuing his demand. The case deserve dismissal and default. I, therefore, give my *ex parte* award as a result of default of appearance on the part of the workman that the termination of services of Shri Ranbir Singh the workman concerned was justified and in order. He is not entitled to any relief whatsoever.

NATHU RAM SHARMA,

Dated the 1st July, 1978

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 641, dated the 5th July, 1978.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,

Dated the 5th July, 1978

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11(112)-3Lab-78/7011.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Delhi Spun Pipe 12/1, Mathura Road, Faridabad :—

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 213 of 1977

between

SHRI JAI PAL WORKMAN AND THE MANAGEMENT OF M/S DELHI SPUN PIPE 12/1,
MATHURA ROAD, FARIDABAD

Present :—

Nemo for the workman.

Shri K.P. Aggarwal for the management.

AWARD

By order No. ID/FD/447-77/50109, dated 6th December, 1977, the Governor of Haryana, referred the following dispute between the management of M/s Delhi Spun Pipe 12/1 Mathura Road, Faridabad and its workman Shri Jai Pal Singh, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d), sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Jai Pal Singh was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The management appeared through their representative but none appeared for the workman despite service on him. Then it was considered to be a case of dismissal in default. The award has not been dictated. This order was dated 18th January, 1978. On 30th January, 1978 workman applied for setting aside the *ex parte* dismissal order which was set aside. There after both the parties appeared. Three adjournments were granted for filing claim statement by the workman but it was not filed. Lastly it was stated by the representative for the workman that the demand notice be treated as statement of claim.

Then the case was fixed for filing written statement by the management. On the date fixed the representative for the workman prayed for adjournment on the ground that he was busy in some strike, so the case was adjourned on 2nd June, 1978 for filing written statement by the management. On 2nd June, 1978 the representative for the management appeared but neither the workman nor his representative appeared. The case was called thrice and it was about 11-30 A.M. that again it was ordered that it is a case of dismissal in default as the workman was not taking any interest, he never appeared and his representative did not take due interest. In the circumstances, I am of the opinion that the workman was not interested in pursuing his dispute. He has default in appearance and therefore, I answer the reference and give my award that

the termination of services of Shri Jai Pal Singh, the workman concerned, was justified and in order. He is not entitled to any relief.

Dated the 12th June, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. dated

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11(112)-3Lab-78/7012.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s H. P. Industries, Mathura Road, Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 92 of 1976 and 135 of 1976

between

THE WORKMEN AND THE MANAGEMENT OF M/S. H. P. INDUSTRIES, MATHURA ROAD,
FARIDABAD

Present :—

Shri Darshan Singh, for the workmen.

Shri S. L. Gupta, for the management.

AWARD

By order No. ID/FD/993-A-76/20411, dated 15th June, 1976, and No. ID/FD/993-B-76/24797, dated 24th July, 1976 the Governor of Haryana, referred the following disputes between the management of M/s. H. P. Industries, Mathura Road, Faridabad and its workmen to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Reference No. 92 of 1976 :—

Whether the action of the management in laying off S. Shri Amar Singh, Vir Singh, Jawahar, Mohinder Singh and Ram Dullare was justified and in order? If not, to what relief they are entitled?

Reference No. 135 of 1976 :—

Whether the termination of services of S. Shri Jawahar, Ramdulare, Amar Singh, Mahender Singh, Daya Ram, Shiv Kumar, Janki Pd. Hanuman Pd., Siya Ram, Ram Pher, Bir Singh and Rattan Singh was justified and in order? If not, to what relief are they entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 8th November, 1976:—

- (1) Whether the action of the management in laying off Sarvshri Amar Singh, Veer Singh, Jawahar, Mohinder Singh, Ram Dulare was justified and in order? If not, to what relief they are entitled?
- (2) Whether the factory of the management has been closed? If so, since when and to what effect?

- (3) Whether the above said persons and others have left the services of the management of their own and have collected all their dues as full and final settlement ?
- (4) If it is proved that the workman have collected their dues in full and final settlement of their claim, whether they can demand their dues against lay off ?
- (5) Relief ?

The case was fixed for the evidence of the workmen. Thereafter several adjournments were obtained for one or the other reasons as negotiations for settlement were going on between the parties. Lastly the parties settled their dispute, according to which the management paid to the following workmen the amount as mentioned against their names.

(1) Amar Singh, son of Jagrat Singh.	546.17
(2) Jawahar Singh, son of Garib Singh.	605.32
(3) Hanuman Pd. son of Babudin.	410.72
(4) Rattan Singh, son of Chain Singh.	319.49
(5) Daya Ram, son of Tota Ram.	191.02
(6) Ram Dulary, son of Lakh Raj.	354.45
(7) Sia Ram, son of Badri Pd.	391.04
(8) Shiv Kumar, son of Chandrika.	380.90
(9) Ram Fair, son of Des Raj.	298.06
(10) Janki Pd. son of Prem Nath.	307.83
(11) Mahander Singh son of Shri Chand.	727.65
(12) Bir Singh son of Ram Singh.	357.17

This amount was paid to the workmen by the management, before this Tribunal. On Payment of this amount, it was settled between the parties that the above mentioned workmen shall be treated as retrenchment under section 25-F of the Industrial Disputes Act, since the date of termination of their services. It was also proviso to the settlement that on the above said payment the workmen shall give up the dispute.

The amount has been paid as said above. The workman have been treated as retrenched as per the settlement. The workman have "as per settlement" given up this dispute. The settlement is just and fair. I, therefore, answer the reference and give my award that the workmen have with-drawn their disputes under both these references and they are not entitled to any relife whatsoever. They have been paid all their legal dues and all their claims have been satisfied.

NATHU RAM SHARMA,

Dated the 23rd June, 1978

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 631, dated the 30th June, 1978.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

NATHU RAM SHARMA,

Dated the 30th June, 1978.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.